

RESOLUTION # 18-002

Resolution Declaring Temporary Freeze on Acceptance of Grading Permits for New Construction of Berms and Ponds

WHEREAS, in Wyoming, counties have been granted broad authority to regulate the use of their lands through the use of zoning plans and resolutions. *Ford v. Board of County Comm'rs of Converse County*, 924 P.2d 91, 95 (Wyo. 1996) (citing Wyo. Stat. §18-5-201 through 207); and

WHEREAS, Teton County, Wyoming has adopted a Comprehensive Plan; and

WHEREAS, Teton County, Wyoming has adopted zoning resolutions to implement the Comprehensive Plan (Teton County refers to their zoning resolutions as Land Development Regulations); and

WHEREAS, once a county passes a zoning resolution, it is unlawful to use any land within the area included in the zoning resolution without first obtaining a zoning certificate from the Board of County Commissioners. Wyo. Stat. §18-5-203. No zoning certificate may be issued unless the planned use fully complies with the zoning regulations. If the Board denies an application, that decision may be reviewed by the district court and by the supreme court. If a landowner violates a zoning resolution passed by the board pursuant to Wyo. Stat. §18-5-202, the resolution is enforceable by injunction. Wyo. Stat. §18-5-205. *Crouthamel v. Board of Albany County Commissioners*, 951 P.2d 835, 838 (Wyo. 1998); and

WHEREAS, County boards have the power to enact a freeze resolution without notice and hearing, if necessary. *Schoeller v. Bd. Of County Commissioners*, 568 P.2d 869, 878 (Wyo. 1977). However, that power is subject to restrictions. "A freeze resolution may initially continue only for a length of time which affords an opportunity to give notice and hold a hearing on the issue of whether or not such a resolution should be given more permanent status under Wyo. Stat. §18-5-202." *Schoeller at 878-879*.

WHEREAS, the Teton County Planning Commission must review and approve any recommendations for a freeze by holding at least one public hearing. Notice of the time and place of the hearing must be given in a newspaper of general circulation in the county at least 30 days prior to the date of the hearing. Before adopting any recommendations from the Teton County Planning Commission, the Teton County Board of County Commissioners must hold at least one public hearing. Notice of the time and place of hearing shall be given by publication in a newspaper of general circulation in the county at least 14 days before the date of the hearing.

WHEREAS, pursuant to Wyo. Stat. §16-4-404(d) the Board of County Commissioners may hold an emergency meeting on matters of serious immediate concern to take temporary action without notice. All action taken at an emergency meeting is of a temporary nature and in order to become permanent shall be acted upon at an open public meeting within 48 hours. Teton County Board of County Commissioners have adopted the statutory provision within their 2014 Rules of Meeting Procedures through Rule 1-1(C); and

WHEREAS, it is recognized that if the subject matter of the freeze resolution was noticed, there is a concern that developers and landowners would file applications for grading permits for berms and ponds prior to the implementation of the freeze resolution taking effect, thus defeating the legitimate governmental purpose of freezing the

COPY

construction of new berms and ponds until the new amended natural resource regulations and other applicable regulations can be completed. Under Teton County Land Development Regulations 8.2.5.C once an application is deemed sufficient, the application is reviewed pursuant to the Land Development Regulations in place on that date, thus any changes made to the Land Development Regulations after the application is deemed sufficient, would have no applicability to that application; and

WHEREAS, the Teton County Land Development Regulations Division 5.7 governs Grading, Erosion Control, and Stormwater Management. Division 5.7 applies to all land disturbing activity and all excavations unless explicitly exempted. Agriculture meeting the standards for exemption in Section 6.1.3.B is not considered land disturbing activity, unless it disturbs natural slopes of 30% or greater. A grading permit is required to show compliance with Division 5.7. Grading Permits are reviewed and issued pursuant to Teton County Land Development Regulation 8.3.4 Grading Permit; and

WHEREAS, Teton County is presently working on drafting new natural resource regulations that will potentially encompass new zoning regulations regarding berms and ponds. (the natural resource regulations are a common term used in Teton County which refers to certain sections of the Teton County Land Development); and

WHEREAS, a berm is defined by Teton County Land Development Regulation 9.5 as a man-made landform, typically built as an earth mound, located so as to screen a structure or property from view and/or to provide sound relief from a nearby road; and

WHEREAS, this resolution shall not apply to storm-water detention basins, drainage-ways, or ponds built for required fire suppression if required by the Fire Marshal, but shall apply to ponds being proposed for habitat enhancement, aesthetic purposes, or fire suppression not required by the Fire Marshal; and

WHEREAS, on Monday, October 9, 2017, the Board of County Commissioners of Teton County, Wyoming held an emergency meeting to approve a 90-day freeze resolution for acceptance of grading permits for new construction of ponds and berms. The following day, Tuesday, October 10, 2017, the Board of County Commissioners held a public hearing and accepted public comment on the 90-day freeze and adopted a Resolution Affirming the Action Taken in the emergency meeting held on October 9, 2017; and

WHEREAS, on November 27, 2017 the Teton County Planning Commission voted 3 to 1, with one member absent to recommend to the Board of County Commissioners to implement the temporary freeze on acceptance of all Grading and Erosion Control Permits and/or Basic Use Permits that include new ponds and/or berms and new pond construction, excluding Grading and Erosion Control Permits and Basic Use Permits for temporary gravel extraction for existing pond maintenance, ditch maintenance, and stream/ditch restoration projects, ending on March 31, 2018; and

WHEREAS, on December 19, 2017 the Teton County Board of County Commissioners met in their regularly scheduled meeting to hear the agenda item of Consideration of the Temporary Freeze on acceptance of grading permits for new construction of berms and ponds. Planning Staff gave a presentation to the Board of County Commissioners reviewing the proposed freeze. Public comment was given by members of the public. Commissioner Rhea moved and Commissioner Epstein seconded, to approve MSC 2017-0058 to adopt a temporary freeze for all Grading and Erosion Control Permits and/or Basic Use Permits that include new ponds and/or berms and new pond construction, excluding Grading and Erosion Control Permits and Basic

Use Permits for temporary gravel extraction for existing pond maintenance, ditch maintenance, and stream/ditch restoration projects, ending on August 8, 2018 or until the Natural Resources Update is complete, whichever comes first, to allow staff time to complete the Natural Resources LDR Update. Reasonable exceptions that do not compromise the justification and basis for the freeze resolution may be approved by the Board of County Commissioners. The Freeze Resolution will not apply to all pending permit applications submitted prior to October 9, 2017. The Freeze Resolution will not apply to all Final Development Permit and Grading and Erosion Control Permit applications that were submitted for projects that have obtained a Sketch Plan approval from the Board of County Commissioners pursuant to a Master Plan. The Freeze Resolution will not apply to the Stockpile Facility on BLM Parcel 9/10. The motion made by Commissioner Rhea passed 3-2.

NOW THEREFORE, it is hereby:

RESOLVED, That the Teton County Board of County Commissioners hereby adopt a temporary freeze on the acceptance of all applications for all Grading and Erosion Control Permits and/or Basic Use Permits that include new ponds and/or berms and new pond construction; and

IT IS FURTHER RESOLVED, the temporary freeze excludes Grading and Erosion Control Permits and Basic Use Permits for temporary gravel extraction for existing pond maintenance, ditch maintenance, and stream/ditch restoration projects, and

IT IS FURTHER RESOLVED, that the temporary freeze shall end on August 8, 2018 or until the Natural Resources Update is complete, whichever comes first, to allow staff time to complete the Natural Resources LDR Update; and

IT IS FURTHER RESOLVED, that reasonable exceptions that do not compromise the justification and basis for the freeze resolution may be approved by the Board of County Commissioners, and

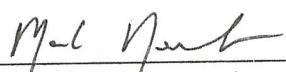
IT IS FURTHER RESOLVED, that the Freeze Resolution will not apply to all pending permit applications submitted prior to October 9, 2017, and

IT IS FURTHER RESOLVED, that the Freeze Resolution will not apply to all Final Development Permit and Grading and Erosion Control Permit applications that were submitted for projects that have obtained a Sketch Plan approval from the Board of County Commissioners pursuant to a Master Plan; and

IT IS FURTHER RESOLVED, that the Freeze Resolution will not apply to the Stockpile Facility on BLM Parcel 9/10;

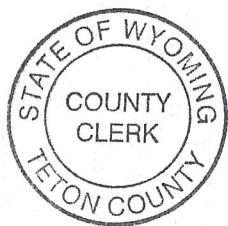
Adopted on the 2 day of January, 2018.

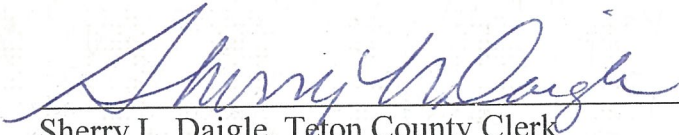
TETON COUNTY BOARD OF COUNTY COMMISSIONERS



Mark Newcomb, Chairman

(Seal)




Sherry L. Daigle, Teton County Clerk